LENA FONG v. REGINA

[C.C.A. (Tan Ah Tah Ag. C.J., Chua and Wee Chong Jin JJ.) May 19, 1961]

[Singapore — Criminal Appeal No. 3 of 1961]

Criminal Law and Procedure — Failure to produce Government Chemist's report of blood on deceased's shirt — New trial ordered.

The appellant was charged with murder but was found guilty of culpable homicide not amounting to murder and was sentenced to 10 years' imprisonment. On appeal against conviction and sentence it was argued *inter alia* that there was a misdirection because the report of the Government Chemist to the effect that there were two groups of blood, (one of which was unidentified) on the shirt of the deceased was not produced at the trial.

Held: (1) the appellant should be given an opportunity to adduce the chemist's report and other evidence relating to blood groups;

(2) there should be a new trial on a charge of culpable homicide not amounting to murder, as the appellant had in effect been acquitted on a charge of murder.

[Editorial Note: This is probably the first case in Malaya of a new trial being ordered on a charge of culpable homicide not amounting to murder when the appellant was originally tried on a charge of murder. The new trial was ordered on the lesser charge because by their verdict at the original trial the jury had in effect acquitted the appellant on the charge of murder. In England, the Court of Criminal Appeal has no power to order a new trial and therefore the same point has never arisen there.]

COURT OF CRIMINAL APPEAL.

J. F. McWilliams for the appellant.

T. S. Sinnathuray (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

The judgment of the Court was delivered by **Tan Ah Tah Ag. C.J.:** In this case the appellant was tried on a charge of murder. At the conclusion of the trial she was found guilty of culpable homicide not amounting to murder and was sentenced to ten years' imprisonment. She now appeals against both conviction and sentence.

It was proved that the dead body of the deceased, who was the appellant's lover, was found in the flat in which she was living. The case for the prosecution was that the death of the deceased was caused by strangulation and that it was the appellant who strangled him. The shirt which the deceased was wearing was found to be stained with blood. There were injuries on the deceased's body which, according to Dr. Aaron, who gave evidence for the prosecution, indicated that he had been involved in a struggle with another person. However, no blood and, indeed, no injuries whatsoever were found on the appellant who was examined by a doctor within a few hours after the death of the deceased.

After the conclusion of the trial, it came to the notice of counsel for the appellant that the shirt worn by the deceased at the time of his death had been sent to the Government Chemist, who had examined it and had made a report in which he stated that he had found two groups of blood, namely, Group A and Group B, on the shirt. This report was not produced at the trial.

It was only after counsel for the appellant came to know of the existence and the contents of the report that he caused a sample of the appellant's blood to be examined. This examination revealed that the appellant's blood belonged to Group B. Now as the deceased's blood also belonged to Group B, it became obvious that the blood which was found on the deceased's shirt and which was classified as Group A was the blood of a third person. The contention put forward by counsel for the appellant in the Court below was that an intruder could have hidden himself in the flat and waited for a suitable opportunity to strangle the deceased. He reinforced this contention by pointing out that whereas Dr. Aaron had stated that a struggle must have taken place, no injuries whatsoever were found on the appellant. In the light of these submissions, the significance of the discovery that blood belonging to Group A had been found on the deceased's shirt becomes apparent. Counsel for the appellant contends that if all the relevant facts had been proved at the trial they would have been sufficient to create a reasonable doubt in the minds of the jury as to the case against the appellant. In the circumstances of this case we consider that the appellant should be given an opportunity to adduce the Chemist's report and the other evidence relating to blood groups. We accordingly order that there should be a new trial; as the appellant has in effect been acquitted on the charge of murder, the new trial should be on a charge of culpable homicide not amounting to murder.

The appellant has relied on other grounds of appeal in this case. One such ground relates to certain theories mentioned by the learned trial Judge in the summing-up as to the manner in which the deceased met his death. Another ground is that the defence was not adequately put to the jury. We have considered the submissions of counsel for the appellant on these points and have reached the conclusion that no substantial miscarriage of justice occurred at the trial as a result of the matters of which complaint is made. As we are ordering a new trial we do not consider it desirable to deal with the evidence and elaborate these points.

Another point taken by counsel for the appellant is that in dealing with the issue of intoxication the learned trial Judge omitted to direct the jury on the question whether the appellant knew that the act which she was alleged to have done was likely to cause death. In our opinion the nature of the injuries in this case has a bearing on the question whether the person who inflicted them on the deceased knew that he or she was likely to cause his death. We do not think it desirable to say anything more on this point except to express our view that, in the circumstances of this particular case, the failure on the part of the learned trial Judge to direct

the jury on the question whether the person who committed the act knew that it was likely to cause death did not cause a substantial miscarriage of justice.

In the result, the conviction is quashed and the sentence set aside, and there will be a new trial on a charge of culpable homicide not amounting to murder.

New trial ordered.

Solicitors: *P. T. Wong & Co.*

INDO AUSTRALIAN TRADING CO. LTD. v. LIM HOON & ANOR.

[A.C.J. (Chua J.) June 9, 1961]

[Singapore — District Court Appeal No. 23 of 1960]

Landlord and tenant — Control of Rent Ordinance (Cap. 242), ss.2, 14, 15, 16 — Whether tenant's widow protected after his death.

The question for consideration in this case was whether the legislature intended to protect the widow who continues to reside in the premises after the death of her husband, the tenant. It was argued (a) that as "tenant" as defined in the Ordinance does not include a widow, she does not automatically become a tenant on the death of her husband, (b) that she could be such a tenant only if the tenancy of her husband was still in existence.

Held: (1) the definition of "members of the family" which includes the words "widow," "widower" and "legal personal representative" clearly indicates that the legislature intended that the tenancy should continue after the death of the tenant where the widow continues to reside in the premises;

(2) no order or judgment for the recovery of possession of any premises comprised in a tenancy can be made or given where the premises are occupied by any of the persons specified in section 2 as members of the tenant's family and that this restriction is not affected by the death of the tenant.

Case referred to:—

(1) *B. T. Hassan* v. *G. A. Scully* [1951] M.L.J. 41.

DISTRICT COURT APPEAL.

L. A. J. Smith for the appellants.

Lim Ewe Huat (Asst. Director of Legal Aid) for the respondent.

Cur. Adv. Vult.

Chua J.: This is an appeal from the judgment of the learned District Judge dismissing the appellants' claim for possession of part of a piece of land (which I will refer to as the said land) known as Lot III Mukim XXVIII.

The facts are shortly these. One Is Koo built a house on the said land some twenty-three years ago with the consent of the then owner of the said land to whom he paid ground rent. Is Koo and his family lived in this house. In March, 1948, Is Koo died and his widow, the 1st respondent, continued to reside in the house with her children, one of whom is the 2nd respondent, and the 1st respondent is still living in the house. In July, 1950, the appellants became the owners of the said land with the knowledge that Is Koo was the tenant but not knowing that Is Koo had died in 1948. Ground rent was paid and accepted by the appellants and rent receipts were issued in the name of Is Koo. In February, 1957, the appellants learnt that Is Koo was dead and they refused to accept any more ground rent. On the 30th November, 1959, the appellants served a Notice to Quit expiring on the 31st December, 1959, addressed to the Chief Justice of Singapore, in respect of the said piece of land. The widow has since petitioned for Letters of Administration to the Estate of Is Koo and the petition is still pending.

The learned District Judge held that the first respondent, being the present occupier of the domestic premises, was entitled to the protection accorded to her by section 16(c) of the Control of Rent Ordinance (Cap. 242) and he dismissed the appellants' claim.

Section 14 of the Control of Rent Ordinance reads as follows:—

"No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this Part of this Ordinance."

Section 15 sets out the cases where an order or judgment as is referred to in section 14 may be made.

Section 16(c) provides:—

"16. In the case of any domestic premises such an order or judgment as is referred to in section 14 of this Ordinance may without prejudice to the provisions of section 15 be made in any of the following additional cases, namely:—

(a) .....

(b) .....

(c) Where neither the tenant nor any member of his family is residing in the premises or any part thereof.

In section 2 "Members of his family" is defined as follows:—

"'members of his family' means:—

(i) the husband or widower; or

(ii) the wife or widow; or

(iii) the father or mother; or

(iv) a son or daughter either of whom is over sixteen years of age; and

where the tenancy has not been determined according to law includes a legal personal representative."

The only ground of appeal is that —

"the learned District Judge was wrong in law in holding that no order for possession could be made, as the deceased tenant's widow was occupying the premises, and should have held that the protection accorded to the widow of a deceased tenant under the Control of Rent Ordinance could only be claimed in those cases where the tenancy was still in existence by devolution or otherwise and not where there was no person with any title at all."

Mr. L. A. J. Smith, for the appellants, draws the Court's attention to the difference between the English Act and our Ordinance. In the Increase of Rent & Mortgage Interest (Restrictions) Act, 1920, in force in England, the expression "tenant" includes the widow of the tenant who was residing with him at the time of his death. There is no doubt that under the English Act the tenancy continues for the benefit of the tenant's widow after his death. Mr. Smith points out that under our Ordinance the widow